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6 MARIA CARMELA CONDE

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 MARIA CARMELA CONDE,

12  
13 Plaintiff,

14 v.

15 OXGORD INCORPORATED, a  
16 California corporation, and DOES 2 –  
17 10, inclusive.

18 Defendants.  
19  
20  
21

Case No.

**COMPLAINT FOR:**

1. COPYRIGHT INFRINGEMENT
2. VIOLATION OF DMCA
3. STATUTORY UNFAIR  
COMPETITION (CAL. BUS. &  
PROF. CODE § 17200 *et seq.*)

JURY TRIAL REQUESTED

22 Plaintiff MARIA CARMELA CONDE (“CONDE” or “Plaintiff”), by and  
23 through her counsel Ted Luymes, hereby complains and alleges against  
24 Defendants OXGORD INCORPORATED (“OXGORD”) and DOES 2 – 10,  
25 inclusive (“Defendants”), on personal knowledge as to his own actions and on  
26 information and belief as to the actions of others, as follows:

27 / / /

**JURISDICTION AND VENUE**

1  
2 1. This action arises under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*,  
3 the Digital Millenium Copyright Act, 17 U.S. Code § 512, as well as under  
4 related state law claims. This Court has jurisdiction over matters arising under  
5 the Copyright Act pursuant to 28 U.S.C. § 1331 (federal question actions) and 28  
6 U.S.C. § 1338 (exclusive jurisdiction over copyright actions and concurrent  
7 jurisdiction over related state law claims).

8  
9 2. Defendants are subject to the personal jurisdiction of this Court inasmuch as  
10 they have their principal places of business, are located in California, or have  
11 purposefully availed themselves of the privileges of doing business in California  
12 with regard to the actions alleged herein, and such jurisdiction is reasonable.

13 3. As further alleged below, venue is proper in this district pursuant to 28  
14 U.S.C. § 1391(b)(1) for OXGORD, the California-based Defendant, under 28  
15 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1391(b)(3). This Court has supplemental  
16 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Venue is  
17 proper in this District pursuant to 28 U.S.C. §1391(b) in that a substantial part of  
18 the events giving rise to the claims occurred in this District, and under 28 U.S.C.  
19 §1400(a) in that it is a copyright case.

**PARTIES**

20 4. Plaintiff MARIA CARMELA CONDE (“CONDE” or “Plaintiff”) is an  
21 individual residing in Los Angeles County, California. On information and  
22 belief, Defendant OXGORD INCORPORATED is a California corporation with  
23 its principal place of business in Los Angeles, California. On information and  
24 belief, Defendant intentionally copies, distributes and sells infringing products  
25 that are sold in this District, either through online outlets or through subsidiary  
26 retailers, distributors, or related companies.

27 5. Plaintiff is unaware of the true names and capacities, whether individual,  
28 corporate, associate or otherwise, of defendant DOES 2 through 10, inclusive, or

1 any of them, and therefore sues these defendant, and each of them, by fictitious  
2 names. Plaintiff will seek leave of this court to amend this complaint when the  
3 status and identities of these defendant are ascertained.

4 6. Plaintiff is informed and believes, and on that basis alleges, that at all  
5 relevant times mentioned in this Complaint, Defendants were acting in concert  
6 and active participation with each other in committing the wrongful acts alleged  
7 herein, and were agents of each other and were acting within the scope and  
8 authority of that agency and with knowledge, consent and approval of one  
9 another.

#### 10 **GENERAL ALLEGATIONS**

11 7. Plaintiff is an online merchant of kitchen wares and other goods. In 2015,  
12 Plaintiff set about to create a new and unique box design for what it calls the  
13 “Golden Chef Collection” of brightly-colored kitchen knives (the “GCC  
14 Product”). Plaintiff commissioned the original graphic art for the box packaging  
15 of the GCC Product. Plaintiff personally authored the unique product description  
16 inside the GCC Product packaging, as well.

17 8. Plaintiff secured an assignment of rights from the graphic artist she  
18 commissioned to create the GCC Product’s box design. Plaintiff duly registered  
19 the copyright to the GCC Product graphics in the U.S. Copyright Office (Reg. no.  
20 VA0002024773) and earlier registered the GCC Product graphics through  
21 *www.copyrightregistrationservice.com*.

22 9. In October 2015, Plaintiff, through her third-party seller account on  
23 Amazon.com, created the following listing:

24 ASIN: B0175UMYVA Golden Chef Collection 8 Pieces Stainless Steel Non  
25 Stick Blades Kitchen Knife Set with Ceramic Peeler Gift Box (“the Listing”)

26 10. The Listing attracted considerable attention and has generated substantial  
27 sales of the GCC Product due, in large part, to the colorful and unique packaging  
28 and descriptive language.

1 11. In or about May 2016, Oxford (which, on information and belief, does  
2 business on Amazon.com as a third-party seller using the name “WonLane”)  
3 began selling on Amazon.com an 8-piece knife set from the following listing:  
4 ASIN: B01G45UYQY Oxford Professional Chef Knives, Multi Use 8pc Gift  
5 Set for Home Kitchen - Stainless Steel Commercial Grade Non-Stick Blades -  
6 2016 Newly Designed Model (the “Oxford Product”).

7 12. The Oxford Product featured a box that copied exactly Plaintiff’s unique  
8 packaging and descriptive language. The only difference was that Oxford  
9 swapped its own name and logo where Golden Chef’s name and logo appeared.  
10 Below are true and correct photos of the GCC Product (left) next to the infringing  
11 Oxford Product (right).

12 13. Based upon information and belief, Oxford deliberately, intentionally, and  
13 knowingly sought to copy the GCC Product exactly. In fact, Oxford did not  
14 feature its infringing box on its Amazon.com listing, its eBay.com listing, or on  
15 its website, *oxford.com*. Rather, the online presence only showed the contents of  
16 the box. In this way, Oxford intended to conceal its infringement from Plaintiff.

17 14. On or about June 21, 2016, Plaintiff ordered a test buy of the Oxford  
18 Product through Amazon.com. When the package arrived on June 23, 2016,  
19 Plaintiff first became aware of Oxford’s infringing conduct. On or about June 23,  
20 2016, Plaintiff notified Oxford through Amazon’s messaging system and through  
21 the contacts page on Oxford’s website, *www.oxford.com/contacts*, that Oxford’s  
22 box design infringed her copyright. Plaintiff also sent a separate email  
23 addressed to *sales@oxford.com* and *customerservice@oxford.com* notifying  
24 Oxford of its illegal infringement. Oxford ignored Plaintiff’s messages and  
25 emails. It continued to sell its infringing Oxford Product on Amazon.com,  
26 eBay.com, and other ecommerce platforms. On information and belief, Oxford  
27 also sold and distributed the Oxford Product to other retailers, who began selling  
28 the product on their own websites and numerous ecommerce platforms. Oxford

1 did all of this before and after it became aware of Plaintiff's copyrights.

2 15. Plaintiff acted diligently to protect her copyrighted material. Consistent  
3 with the Digital Millenium Copyright Act ("DMCA") Plaintiff filed several  
4 reports of copyright infringement on Amazon.com's portal to report infringement  
5 of intellectual property. On January 15, 2017, Amazon finally suspended  
6 (removed access to) the listing for the Oxford Product (ASIN: B01G45UYQY).  
7 However, other third-party sellers affiliated with, or supplied by, Oxford  
8 continued to sell the Oxford Product on other Amazon.com listings.

9 16. On information and belief, Oxford filed with Amazon.com a DMCA  
10 Counter-notice, pursuant to 17 U.S. Code § 512(f), for the purpose of compelling  
11 Amazon.com to restore its listing. As part of its DMCA Counter-notice, Oxford  
12 represented that "the material [the infringing Oxford Package] . . . was removed  
13 or disabled by mistake or misidentification." At the time it made this  
14 representation to Amazon.com, Oxford knew or reasonably should have known  
15 that its packaging infringed on Plaintiff's copyrights. Oxford knew, or should  
16 have known, that its product had been removed due to a legitimate claim of  
17 copyright infringement and not by "mistake or misidentification." Oxford made  
18 the misrepresentation with the intent that Amazon.com would rely on it and  
19 restore the listing for the infringing product.

20 17. Due to Oxford's materially false DMCA Counter-Notice, Plaintiff was  
21 compelled to retain the services of an attorney to investigate and respond to  
22 Oxford's conduct. On January 22, 2017, counsel sent a letter to Oxford  
23 demanding that it withdraw its DMCA Counter-notice to Amazon.com and  
24 requesting that Oxford furnish evidence that it had done so. Through its counsel,  
25 Oxford represented that it did withdraw its DMCA-Counter-notice, but it has  
26 failed and refused to provide evidence that it did so.

27 18. Long after it learned of Plaintiff's intellectual property rights, Oxford  
28 continued to manufacture, import, market, advertise, sell, and distribute the

1 infringing Omgord Product on numerous online platforms. Upon information and  
2 belief, Omgord continued to advertise and sell its infringing product on  
3 Walmart.com and eBay.com on its own behalf. Omgord also continued to supply  
4 third-party sellers who, in turn, created their own listings for the infringing  
5 product on Amazon.com, Walmart.com, eBay.com, and many other websites and  
6 ecommerce platforms. Omgord did so intentionally and with knowing disregard of  
7 Plaintiff's copyright.

8 19. On information and belief, Defendants had knowledge of the infringing  
9 conduct of one or all of each other and materially contributed to, induced or  
10 caused the infringing activity of one or all of each other.

11 **FIRST CAUSE OF ACTION**

12 **(Copyright Infringement (17 U.S.C. § 501, *et seq.*) Against All Defendants)**

13 20. Plaintiff realleges and reincorporates paragraphs 1- 20 above, as though  
14 set forth fully herein.

15 21. Plaintiff is informed and believes and thereon alleges that Defendants, and  
16 each of them, had access to Plaintiff's work through Amazon.com and the  
17 Internet.

18 22. Plaintiff is informed and believes and thereon alleges that Omgord  
19 knowingly and intentionally reproduced the GCC Product without Plaintiff's  
20 permission.

21 23. Plaintiff is informed and believes and thereon alleges that DOES 2-10 are  
22 manufacturers, resellers, or other entities that have an ongoing relationship with  
23 Omgord and either bought or supplied infringing Omgord Products from Omgord.

24 24. Plaintiff is informed and believes and thereon alleges that Defendants, and  
25 each of them, infringed Plaintiff's copyright by creating, making and/or  
26 developing directly infringing and/or derivative works from Plaintiff's GCC  
27 Product and by producing, distributing and/or selling infringing copies through a  
28 network of retail stores and websites.



1 25. Defendants' infringement has caused substantial damage to Plaintiff, in an  
2 amount to be proven at trial. Plaintiff has suffered general and special damages.  
3 Defendants have also obtained profits either directly or indirectly from its  
4 infringing activities.

5 26. Plaintiff is informed and believes and thereon alleges that Defendants'  
6 infringing activities have continued after Plaintiff demanded that they cease and  
7 desist, so that the infringing activities are willful, intentional and malicious.

8 27. Defendants' infringement irreparably harms Plaintiff and leaves her  
9 without an adequate remedy at law, so that she is entitled to an injunction to halt  
10 any further infringing activity. On information and belief, Defendants, and each  
11 of them, have vicariously or contributorily infringed Plaintiff's copyright in the  
12 GCC Product.

## 13 14 SECOND CAUSE OF ACTION

### 15 (Violation of DMCA 17 U.S.C. § 512(f), Against All Defendants)

16 28. Plaintiff repeats and realleges the allegations contained in paragraphs 1  
17 through 20 above.

18 29. On information and belief, Oygord filed with Amazon.com a DMCA  
19 Counter-notice, pursuant to 17 U.S. Code § 512(f), for the purpose of compelling  
20 Amazon.com to restore its suspended listing. As part of its DMCA Counter-  
21 notice, Oygord represented that "the material [the infringing Oygord Package] . . .  
22 was removed or disabled by mistake or misidentification."

23 30. At the time it made this representation to Amazon.com, Oygord knew or  
24 reasonably should have known that its packaging infringed on Plaintiff's  
25 copyrights. Oygord knew, or should have known, that its product had been  
26 removed due to a valid claim of copyright infringement and not by "mistake or  
27 misidentification." Oygord made the misrepresentation with the intent that  
28 Amazon.com would rely on it and restore the listing for the infringing product.

31. Due to Oygord's materially false DMCA Counter-Notice, Plaintiff was compelled to retain the services of an attorney to investigate and respond to Oygord's conduct. On January 22, 2017, Plaintiff's counsel sent a letter to Oygord demanding that it withdraw its DMCA Counter-notice to Amazon.com and requesting that Oygord furnish evidence that it had done so. Through its counsel, Oygord represented that it did withdraw its DMCA-Counter-notice, but it has failed and refused to provide evidence that it did so.

32. Plaintiff has suffered injury, including but not limited to attorney's fees, lost profits, brand damage, and lost reputation in an amount that will be proven at trial. Plaintiff is entitled to all damages, costs and attorney's fees for Defendant's materially false DMCA Counter-notice.

### **THIRD CAUSE OF ACTION**

#### **(Statutory Unfair Competition Against All Defendants – Cal. Bus. & Prof. Code § 17200)**

33. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 20 above.

34. Defendants' actions as described herein constitute unlawful, unfair or fraudulent business practices as defined in Cal. Bus. & Prof. Code § 17200. Plaintiff is entitled to restitution or disgorgement of all profits gained by Defendants as a result of their unfair competition. Plaintiff is further entitled to an injunction against further unfair business practices, including but not limited to the unauthorized use and replication of Plaintiff's box.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendants as follows:

a. That the Court order Defendants to pay monetary damages to Plaintiff in an



1 amount sufficient to compensate her for all damages resulting from the  
2 unauthorized copying, distribution and sale of her work, including, but not limited  
3 to, her lost sales and the disgorgement of Defendants' profits;

4 b. That Defendants, their agents, and affiliates all be enjoined from selling,  
5 distributing, or manufacturing items which infringe Plaintiff's copyrights on  
6 Plaintiff's work and from any unauthorized copying of any of Plaintiff's  
7 copyrighted work;

8 c. That Plaintiff be awarded statutory penalties for Defendants' knowing and  
9 willful copyright infringement;

10 d. That the Court find Defendants' violation of Plaintiff's rights of attribution  
11 be found to be willful, wanton and oppressive so that Plaintiff is entitled to  
12 punitive damages;

13 e. That Plaintiff be awarded attorney's fees, costs of suit, and damages  
14 pursuant to 17 U.S.C. § 512(f);

15 f. That Plaintiff be awarded prejudgment interest as allowed by law; and

16 g. That Plaintiff be awarded such further legal and equitable relief  
17 as the Court deems proper.

18  
19 DATED: March 10, 2017

TED LUYMES LAW FIRM

20  
21 By: 

22 Ted H. Luymes  
23 Attorney for Plaintiff  
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**REQUEST FOR JURY TRIAL**

Pursuant to Fed.R.Civ.P. 38(b), Plaintiff hereby requests a trial by jury of all issues raised by its counterclaims which are properly triable to a jury.

DATED: March 10, 2017

TED LUYMES LAW FIRM

By: 

Ted H. Luymes  
Attorney for Plaintiff